

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4204 of 1983

Date of decision: 06-09-96

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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Versus

STATE OF GUJARAT  
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Appearance:

MR JF SHAH for Petitioner

Mr. H. L. Jani for Respondents  
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 06/09/96

ORAL JUDGEMENT

Heard the learned counsel for the parties.

The petitioner, a senior clerk, in the Urban Family Welfare Centre, Civil Hospital, Gandhinagar, has filed this petition challenging the orders at annexures C and F. Further prayer has been made that the respondents be directed to condone the break in service of the

petitioner for the period from 1-3-1963 to 17-6-1963, and to give him seniority on the basis that he was recruited with effect from 17-12-1962 and also to grant him deemed date of promotion with all ancillary benefits including monetary benefits. Challenge is made on the ground that before passing the order the petitioner was not given notice or opportunity of hearing. The second contention raised is that the order has been passed after about four years.

2. None of the contentions raised on behalf of the petitioner has any substance. Learned counsel for the petitioner is unable to show any rule or regulation or circular under which provision is made for condonation of break in service of a Government servant. Break in service can be condoned only by the authority who made the order on 18-6-1976 if he has power and not otherwise. It is true that the order dated 18-6-1976 has been issued with the concurrence of General Administration Department and Finance Department, but unless the power is there for condonation of break in service the concurrence will not make an illegal order to be legal. In view of these facts, in case before passing the order dated 28th January, 1976 notice or opportunity was not given, it cannot be said to be illegality which should be corrected by this court. There is yet another reason not to interfere with the order dated 28th January, 1980. If the impugned order is set aside by this Court sitting under Article 226 of the Constitution of India it will amount to restoring an illegal order, which this court will not do. So far as the ground of delay is concerned, suffice it to say that in case by mistake if earlier an order has been made, it will not come in the way of the respondents to rectify the same as and when it has come to the notice of the authority.

3. Challenge has been made to order annexure-F on the ground that by this order seniority has not been given to the petitioner from 17-4-1970 in the cadre of junior clerk. I do not find any substance in this contention also. The order dated 10-2-1983 (annexure F) is clear and the seniority has rightly not been given to the petitioner from 7-4-1970. The order has been passed giving seniority to the petitioner as per the provisions of Resolution dated 17-4-1970 of the General Administration Department, as per the rank given to the petitioner on regular basis by the concerned Selection Committee. The counsel for the petitioner has not produced on record the Resolution of the Government dated 17-4-1970.

4. In the result this petition fails and the same is dismissed. Rule discharged. Ad interim relief granted earlier stands vacated. No order as to costs.

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